



02-07-05

Patent Application Number: 09/396,175

Attorney Docket Number: MIT.7238

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Joseph G. DESLOGE

GROUP: 2634

SERIAL NO: 09/396,175

EXAMINER: L. Jiang

FILED: September 14, 1999

FOR: **LOCATING-ESTIMATING, NULL STEERING  
(LENS) ALGORITHM FOR ADAPTIVE ARRAY  
PROCESSING**

**Mail Stop Petitions**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

**RECEIVED**

FEB 10 2005

**OFFICE OF PETITIONS**

Sir:

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED  
APPLICATION UNDER 37 C.F.R. 1.137(b)**

The Applicant respectfully requests the Honorable Commissioner to grant this Petition under 37 C.F.R. 1.137(b) and revive the unintentional abandoned above-identified application in view of the facts and reasons set forth below.

**CERTIFICATE OF EXPRESS MAIL UNDER 37 C.F.R. §1.10**

I hereby certify that this New Application Transmittal and the documents referred to as enclosed therein are being deposited with the United States Postal Service on 02/04/05 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV622987131US addressed to the: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450. Mail Stop Petitions.

  
Sarah E. Kennedy

02/09/2005 AWONDAF1 00000091 09396175

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**Statement of Facts**

1. On December 21, 2001, the US Patent Office mailed a Quayle Action to Mr. Patrick J. O'Shea (Registration Number 35,305), a former partner of the undersigned's firm. Mr. O'Shea was the attorney handling the above-identified application (as evidenced by the attached copy of Official Filing Receipt identifying Mr. O'Shea as the attorney responsible for handling the correspondences for the above-identified application)

2. Mr. O'Shea received the Quayle Action dated December 21, 2001. (See attached copies of the Applicant's Representative's Docket Records for the Months of February 2001 to July 2001 evidencing receipt of the Quayle Action dated December 21, 2001.)

3. On August 27, 2002, the US Patent Office mailed a Notice of Abandonment indicating that the above-identified application had been abandoned for failing to response to the Quayle Action dated December 21, 2001. Mr. O'Shea apparently never received the Notice of Abandonment mailed August 27, 2002. (See attached copies of the Applicant's Docket Records for the month of September 2002.)

4. On or about September 9, 2003, while researching another docketing matter, Mr. O'Shea determined that the above-identified application had gone abandoned.

5. On September 20, 2003, Mr. O'Shea prepared and mailed, with a Certificate of Mailing, a Petition to Revive under 37 C.F.R. 1.137(b). (See attached copy of mailed Petition with Certificate of Mailing.)

6. On or about September 3, 2004, during an annual review of records, Mr. O'Shea determined that the return postcard had not been received from the US Patent Office in connection with the previously filed Petition. Mr. O'Shea proceeded to file a Power to Inspect for the above-identified application to determine whether the Petition of September 13, 2003 had been received and/or acted upon by the US Patent Office.

7. On or about September 3, 2004, Mr. O'Shea informed the undersigned that the US Patent Office never received the Petition of September 13, 2003, and indicated that he would file a subsequent Petition.

8. On or about December 31, 2004, the undersigned, in going through the files handled by Mr. O'Shea, determined that Mr. O'Shea had failed to file the subsequent Petition as instructed by the undersigned on or about September 8, 2004.

9. On December 31, 2004, Mr. O'Shea's partnership with Gauthier & Connors was severed.

10. On January 28, 2004, the attached Declaration was sent to Mr. O'Shea for his execution. Mr. O'Shea has refused to execute the attached Declaration.

**REMARKS**

The above-identified application has been unintentionally abandoned.

**Terminal Disclaimer**

A terminal disclaimer and the appropriate fees have been attached to this Petition under 37 C.F.R. 1.137(b). The Honorable Commissioner is respectfully requested to accept the attached terminal disclaimer to satisfy the requirements of 37 C.F.R. 1.137(b).

**Declaration**

A newly executed Declaration has been attached hereto as required by the Quayle Action dated December 21, 2001. The Honorable Commissioner is respectfully requested to accept the attached Declaration to satisfy the requirements of 37 C.F.R. 1.137(b).

**Formal Response**

A Formal Response to the Quayle Action dated December 21, 2001, correcting the Abstract and the Specification, has been attached hereto as required by the Quayle Action dated December 21, 2001. The Honorable Commissioner is respectfully requested to accept the attached Formal Response to satisfy the requirements of 37 C.F.R. 1.137(b).

**Substitute Specification**

A Substitute Specification of the originally filed specification, pursuant to 37 C.F.R. 1.125(a), has been attached hereto as required by the Quayle Action dated December 21, 2001. The Honorable Commissioner is respectfully requested to accept the attached Substitute Specification to satisfy the requirements of 37 C.F.R. 1.137(b).

**Evidence Showing Non-Receipt of Notice of Abandonment**

It was at the time of mailing of Quayle Action, and still is the policy of Gauthier & Connors, to review all incoming mail and immediately docket all incoming correspondences from the US Patent Office. It was at the time of mailing of the Notice of Abandonment, and still is the policy of Gauthier & Connors, to immediately docket all incoming Notices from the US Patent Office concerning Abandonment for resolution within thirty days.

The Applicant's Representatives have attached the docket records of the Applicant's Representatives for the period of February 2001 to July 2001. The period of February 2001 to July 2001 demonstrates any due dates relating to correspondences from the US Patent Office having a mail date from November 2000 to June 2001 that were received by the Applicant's Representatives.

The Applicant's Representatives have also attached the docket records of the Applicant's Representatives for the period of September 2002. The period of September 2002 demonstrates any due dates relating to correspondences from the US Patent Office having a mail date from June 2002 to August 2002 that were received by the Applicant's Representatives.

As evidenced by the docket records of the Applicant's Representatives for the period of February 2001 to July 2001, the Applicant's Representatives received the Quayle Action

December 21, 2001. On the other hand, the docket records of the Applicant's Representatives for the period of September 2002 clearly show no entries evidencing the receipt of a Notice of Abandonment relating to the above-identified application.

If the Notice of Abandonment, mailed August 27, 2002, had been received by the Applicant's Representatives, the Notice of Abandonment would have been docketed for a Response within thirty days (September 26, 2002). The docket records for the period of September 2002 clearly show no entries for a Notice of Abandonment relating to the above-identified application.

**Explanation for Failing to Respond to the Quayle Action dated December 21, 2001**

Applicant's representatives have thoroughly reviewed the undersigned's law firm's paper and electronic files for the above-identified application and have found no evidence that the Applicant desired to abandon this allowed application.

It was the policy of the undersigned's law firm at the time of filing the above-identified application, and it is still the policy, that the correspondence address, provided to the US Patent Office, designate the attorney responsible for that client as the primary contact person although another attorney or partner in the firm will actually be responsible for performing the actual work in preparing and/or prosecuting the application. This policy was established to prevent activities by associates and/or partners not responsible for the client from negatively impacting the client as well as safeguarding the docketing procedures of the undersigned's law firm. The above described policy has successfully safeguarded the docketing process of the undersigned's law firm.

It was the policy of the undersigned's law firm at the time of filing the above-identified application, and it is still the policy, that all incoming correspondences from the US Patent Office are given to the attorney named as the primary contact in the correspondence address. It is the responsibility of the attorney named as the primary contact in the correspondence address to process the correspondence and properly docket the correspondence on both the docket of the attorney responsible for that client and the docket of the attorney actually handling the matter. The policy of designating the attorney responsible for that client as the primary contact person was implemented to ensure that the attorney ultimately responsible to the client was aware of all

the activities associated with the client. The above described policy has successfully safeguarded the docketing process of the undersigned's law firm.

With respect to the above-identified application, Mr. O'Shea failed to follow the policies of the undersigned's law firm at the time of filing the above-identified application by naming himself as the primary contact in the correspondence address. Mr. O'Shea's failure to follow policy hindered the safeguards of the policies the undersigned's law firm associated with docketing from being realized.

The undersigned was, at the time of filing the above-identified application, and still is the attorney responsible for the client associated with the above-identified application. Mr. O'Shea's failure to follow the policies of the undersigned's law firm, by designating himself as the primary contact person at the time of filing the above-identified application, hindered the undersigned from properly monitoring and supervising the overall prosecution of the above-identified application.

Notwithstanding the fact that Mr. O'Shea breached the policies of the undersigned's law firm by designating himself as the primary contact in the correspondence address, Mr. O'Shea has refused to sign a declaration to provide evidence that Mr. O'Shea was the attorney responsible for handling the prosecution of the above-identified application and to provide evidence that Mr. O'Shea, in accordance with Mr. O'Shea's conversations with the undersigned, does not recall informing the Applicant of the Quayle Action and the need to respond to avoid abandonment of the Application.

It was the policy of the undersigned's law firm at the time of the mailing of the Quayle Action, and still is the policy, to forward all Office Actions to the client with a cover letter explaining the Office Action and the suggested course of action going forward. After a thorough review of the Firm's paper file for the above-identified application and electronic records of the undersigned's law firm, the undersigned could not find any evidence that this letter was ever generated or forwarded to the Applicant.

The failure to properly respond to the Quayle Action dated December 21, 2001 was due to the actions of Mr. O'Shea, wherein these actions were not authorized by the Applicant.

In view of the evidence showing that a letter informing the Applicant of the Quayle Action was never sent, the Applicant was never aware of a pending Office Action that required a

Response. Moreover, Mr. O'Shea's failure to respond to the Quayle Action was not authorized by the Applicant. Since the Applicant did not know of the need to respond to the outstanding Quayle Action and the Applicant did not authorize the abandonment of the above-identified application, the Applicant could not form the requisite intent to abandon the above-identified allowed application.

**Explanation for Delay in Realizing the Status of the Above-Identified Application**

The Applicant was relying upon the Applicant's Representatives to monitor the progress of the Applicant's design application. As explained above, the Applicant's Representatives, due to Mr. O'Shea's failure to follow the policies of the undersigned's law firm, failed to realize that this application had become abandoned until an investigation in September of 2003 of all of Mr. O'Shea's matters, the investigation focusing upon files that did not have a correspondence from the US Patent Office for over a year, resulted in the discovery of this application having been abandoned for failure to respond to the Quayle Action.

Mr. O'Shea made an attempt to resolve this matter on September 20, 2003, but the Petition apparently was never received by the US Patent Office. During a subsequent investigation in September of 2004, Mr. O'Shea determined that the US Patent Office never received the September 2003 Petition.

Mr. O'Shea informed the undersigned of the fact that the September 2003 Petition was not received at the US Patent Office and that he would file a subsequent Petition.

Mr. O'Shea did not file a subsequent Petition.

On or about December 31, 2004, the undersigned, upon reviewing the files handled by Mr. O'Shea, determined that Mr. O'Shea had failed to file the subsequent Petition.

Mr. O'Shea's partnership with the firm was severed on December 31, 2004.

**SUMMARY**

The Applicant did not intend to abandon nor delay the prosecution of the above-identified application because the Applicant's Representatives did not receive the Notice of Abandonment. Moreover, the Applicant did not intend to abandon nor delay the prosecution of the above-identified application because the Applicant relied upon the undersigned to monitor the progress of the Applicant's application and to inform the Applicant when action was required to maintain the pendency of the application. The undersigned was hindered from properly monitoring the progress of the Applicant's application as a result of Mr. O'Shea's failure to follow the policies of the undersigned's law firm. The Applicant was not aware that the Quayle Action had not been received nor that action was needed to gain issuance of the above-identified application. Lastly, the Applicant did not authorize Mr. O'Shea or the undersigned to abandon the above-identified application.

In conclusion, the Applicant should not be penalized due to the actions of Mr. O'Shea. The Applicant did not intend to abandon nor delay the prosecution of the above-identified application.

The Honorable Commissioner is respectfully encouraged to contact the undersigned to discuss the circumstances warranting this Petition.

Accordingly, in view of all the reasons set forth above and the attached evidence, the Honorable Commissioner is respectfully requested to grant the Petition to Revive under 37 C.F.R. 1.137(b).

Respectfully submitted,



Matthew E. Connors  
Registration No. 33,298  
Gauthier & Connors  
225 Franklin Street, Suite 3300  
Boston, Massachusetts 02110  
Telephone: (617) 426-9180  
Extension 112

MEC/MJN/mjn







IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:

Joseph G. Desloge

GROUP: Not yet assigned

SERIAL NO:

09/396,175

EXAMINER: Not yet assigned

FILED:

September 14, 1999

FOR:

LOCATING-ESTIMATING, NULL STEERING (LENS)  
ALGORITHM FOR ADAPTIVE ARRAY PROCESSING

Honorable Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Sir:

**PETITION TO REVIVE UNDER 37 C.F.R. §1.137(b)**

The undersigned hereby requests revival of the above identified unintentionally abandoned application.

The entire delay in filing a reply to the Official Action was unintentional.

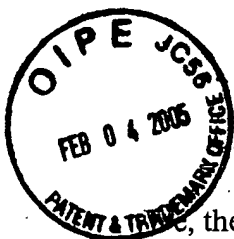
A declaration signed by the inventor on September 16, 2003 is enclosed herewith.

Please charge Deposit Order Account 19-0079 in the amount of \$650.00. A duplicate copy of this Petition is enclosed herewith.

If a telephone interview could assist in the prosecution of this application, please call the undersigned attorney.

Respectfully submitted,

Patrick J. O'Shea  
Reg. No. 35,305  
Samuels, Gauthier & Stevens, LLP  
225 Franklin Street, Suite 3300  
Boston, MA 02110  
(617) 426-9180, Ext. 121

**DECLARATION AND POWER OF ATTORNEY**

, the below named inventors, hereby declare that:

Our residences, post office addresses, and citizenships are as stated below next to our respective names.

We believe we are the original, first, and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled **LOCATING-ESTIMATING, NULL STEERING (LENS) ALGORITHM FOR ADAPTIVE ARRAY PROCESSING**, the specification of which was filed with the United States Patent and Trademark Office on September 14, 1999 and designated Serial No. 09/396,175 and claims priority under 35 U.S.C §119 (e) from U.S. Provisional Patent Application Serial No. 60/100,291 filed September 14, 1998.

We hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims.

We acknowledge the duty to disclose information which is material to patentability in accordance with Title 37, Code of Federal Regulations, Section 1.56.

We hereby declare that all statements are made hereby of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

And we hereby appoint:

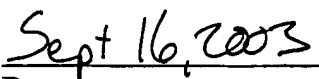
Maurice E. Gauthier	-	Reg. No. 20,798
Richard L. Stevens	-	Reg. No. 24,445
Matthew E. Connors	-	Reg. No. 33,298
William E. Hilton	-	Reg. No. 35,192
Patrick J. O'Shea	-	Reg. No. 35,305
Arlene J. Powers	-	Reg. No. 35,985
Richard J. Stevens, Jr.	-	Reg. No. 44,357
Peter Stecher	-	Reg. No. 47,259

all of the firm of Samuels, Gauthier & Stevens, our attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

We request that all correspondence be directed to:

Matthew E. Connors, Esq.  
Samuels, Gauthier & Stevens, LLP  
225 Franklin Street, Suite 3300  
Boston, MA 02110

  
\_\_\_\_\_  
Joseph G. Desloge

  
\_\_\_\_\_  
Date

Residence:

132 Armory Street #5  
Brookline, MA  
02446-3572

Citizenship:

U.S.

Post Office Address:

Same as above



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Joseph G. DESLOGE

GROUP: 2634

SERIAL NO: 09/396,175

EXAMINER: L. Jiang

FILED: September 14, 1999

FOR: **LOCATING-ESTIMATING, NULL STEERING  
(LENS) ALGORITHM FOR ADAPTIVE ARRAY  
PROCESSING**

**Mail Stop Petitions**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

**RECEIVED**

FEB 10 2005

Sir:

**OFFICE OF PETITIONS**

**DECLARATION IN SUPPORT OF THE PETITION TO REVIVE AN  
UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R.  
1.137(b)**

I, Patrick J. O'Shea, a registered patent attorney (Registration Number 35,305), do hereby declare and affirm that the following statements are true and that the following statements, having been made on information and belief, are believed to be true:

1) I was the attorney assigned to handle the prosecution of the above-identified application;

2) I, based on information and belief, do not recall sending the Applicant of the above-identified application a letter informing the Applicant of the Quayle Action dated December 21, 2001;

3) I, based on information and belief, do not recall informing the Applicant of the above-identified application that a response was required in connection with the Quayle Action dated December 21, 2001;

4) I, based on information and belief, do not recall receiving any instructions from the Applicant of the above-identified application informing the undersigned to abandon the above-identified application;

5) I, based on information and belief, do not recall preparing any response to the Quayle Action dated December 21, 2001;

6) I, based on information and belief, do not recall being aware of the outstanding action, corresponding to the above-identified application, on my docket report; and

7) I, based on information and belief, do not recall reconciling the outstanding action, corresponding to the above-identified application, on my docket report.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

**-COPY-**

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Patrick J. O'Shea  
Registration No. 35,305



Patent Application Number: 09/396,175

Attorney Docket Number: MIT.7238

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Joseph G. DESLOGE

GROUP: 2634

SERIAL NO: 09/396,175

EXAMINER: L. Jiang

FILED: September 14, 1999

FOR: LOCATING-ESTIMATING, NULL STEERING (LENS) ALGORITHM FOR  
ADAPTIVE ARRAY PROCESSING

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

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**TERMINAL DISCLAIMER FOR PETITION UNDER 37 C.F.R. 1.137(b)**

The owner, **Massachusetts Institute of Technology**, of one hundred (100) percent interest in the above-identified application hereby disclaims a terminal part of the term of any patent granted the above-identified application equivalent to the lesser of the period of the abandonment of the application or the period extending beyond twenty years from the date on which the above-identified application was filed in the United States or if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. §120, 121 or 365(c), from the date on which the earliest such application was filed. This disclaimer also applies to any patent granted on a utility or plant application filed before June 8, 1995, or a design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. This disclaimer is binding upon the grantee, and its successors or assigns.

The Commissioner is hereby authorized to charge the terminal disclaimer fee of \$110 as required under 37 C.F.R. 1.20(d), to Deposit Account No. . An additional copy of this form is enclosed.

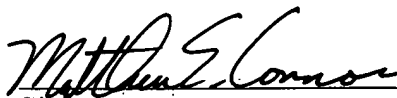
**The undersigned is an attorney or agent of record.**

02/09/2005 AWONDAF1 00000091 09396175

02 FC:1999

110.00 OP

MEC/MJN/mjn

 2/4/05  
Signature Date

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Registration No. 33,298  
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